

REMARKS

Claims 5 to 26 are currently pending in the present application.

In view of this response, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants thank the Examiner for acknowledging the claim for foreign priority and receipt of a certified copy of the priority document.

With respect to paragraph two (2) of the Office Action, claims 5 to 26 were rejected under the second paragraph of 35 U.S.C. § 112 as indefinite.

While the rejections may not be agreed with, to facilitate matters, claims 5 and 7 have been rewritten to better clarify the claimed subject matter.

In particular, it is respectfully submitted that the cited terms and phrases are definite. and clear as used and as would be understood when each of the claims is read in view of the specification -- which is the proper objective standard. For example, the specification at page 2, line 36 to page 3, line 22 discloses a "control device for influencing the brake pressure on the front wheels is present which limits the brake pressure on the front wheels depending on the measured slip and/or depending on the measured load on the rear axle or on the running wheels of the rear axle, the regulating or control device multiplying the difference of the brake pressures on the front wheels by a value *which is smaller than 1*."

This section of the Specification also explains that with a high rear axle load, a high lateral guiding force is brought about, so that the permissible yawing moment on the front axle can be increased in comparison with an empty vehicle. *This means that, with a low load on the rear axle, the permissible pressure difference of the running wheels on the front axle and thus the yawing moment on this axle is limited to a small value. The smaller the load on the rear axle, the smaller the factor is. With a load corresponding to 100% of maximum load, a load factor of 1 is obtained. With a lower load, correspondingly lower values are obtained.*

Therefore, it is clear that the claim feature of "smaller than 1" is consistent with the Specification because in the case of a load corresponding to 100% of maximum load (in which a load factor of 1 is obtained) no multiplication is necessary since multiplication by 1 will result in the same value as not multiplying by 1.

Furthermore, the above cited section of the Specification also makes it clear that the

permissible pressure differential can be both proportional to the load and reduced by multiplying it by a number smaller than 1. For example, based on different loads A and B two different permissible pressure differentials might be determined, each proportional to the load on which the determination is based, and then based on the determined permissible pressure differentials the control unit could (if the measured pressure differential is too great) influence the actual braking pressure on each front wheel multiplying the difference of the brake pressures on the front wheels by a value which is smaller than 1.

It is respectfully submitted that the cited terms and phrases are therefore definite, especially to a person having ordinary skill in the art, in view of the foregoing, as well as the remainder of the specification.

In view of the above, it is respectfully submitted that the presently pending claims comply with the second paragraph of § 112 since a person having ordinary skill in the art would understand what is claimed when the claim is read in view of the specification. See Miles Labs., Inc. v. Shandon, Inc., 997 F.2d 870, 27 U.S.P.Q.2d 123 (Fed. Cir. 1993). In this regard, it is also noted that terms in a claim are to be understood in view of the specification. (See In re Weiss, 26 U.S.P.Q.2d 1885, 1887 (Fed. Cir. 1993) (when interpreting a claim term or phrase, one must “look to the specification for the meaning ascribed to that term”; Board reversed) (unpublished decision); In re Okuzawa, 190 U.S.P.Q. 464, 466 (C.C.P.A. 1976) (“claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification”; Board reversed; emphasis in original) (citing In re Royka, 180 U.S.P.Q. 580, 582-83 (C.C.P.A. 1974) (claims are “not to be read in a vacuum” and “their terms still have to be given the meaning called for by the specification of which they form a part”; Board reversed; emphasis in original); and In re Rohrbacher, 128 U.S.P.Q. 117, 119 (C.C.P.A. 1960) (an “applicant is his own lexicographer and words used in his claims are to be interpreted in the sense in which they are used in the specification”; Board reversed)).

Approval and entry are respectfully requested, as is withdrawal of the indefiniteness rejections.

With respect to paragraph three (3) of the Office Action, to facilitate matters, claims 10 to 13, 16 and 17 have been rewritten as suggested. Approval and entry are respectfully requested.

With respect to paragraph four (5) of the Office Action, claims 5 to 26 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,944,394 (“Friederichs”).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejections may not be agreed with, to facilitate matters, claim 5 has been rewritten to provide that *the control device is operable to influence the brake pressure on the front wheels which limits the brake pressure on the front wheels by multiplying the difference of the brake pressures on the front wheels by a value which is smaller than 1*. Support for the features is disclosed in the Substitute Specification (see, e.g., at page 3, lines 8 to 22; and page 4, lines 4 to 11).

The Friederichs reference does not identically disclose (or even suggest) the above cited features, as provided for in the context of claim 5 as presented. For example, the Friederichs reference does not even mention limiting the brake pressure on the front wheels by multiplying the difference of the brake pressures on the front wheels by a value which is smaller than 1. In fact, Friederichs at col. 2, lines 27 to 29, refers to “adjusting the braking pressure of the high[er pressure] wheels so as to maintain the permissible breaking pressure difference”, and further states (at col. 3, lines 46 to 49) that the “EBS regulator (2) begins to operate in accordance with the present invention to keep the breaking pressure of the high[er

U.S. Pat. App. Ser. No. 10/581,504
Attorney Docket No. 12841/12
RCE Reply to Final Office Action of April 13, 2010

pressure] wheel constant". Thus, the cited sections of Friederichs do not identically disclose or suggest the above-cited feature, as provided for in the context of claim 5 as presented.

Accordingly, it is respectfully submitted that claim 5, as presented, is allowable, as are its dependent claims.

Claim 7, as presented, includes features similar to those of claim 5, as presented, so that claim 7, as presented, is allowable for essentially the same reasons, as are its dependent claims.

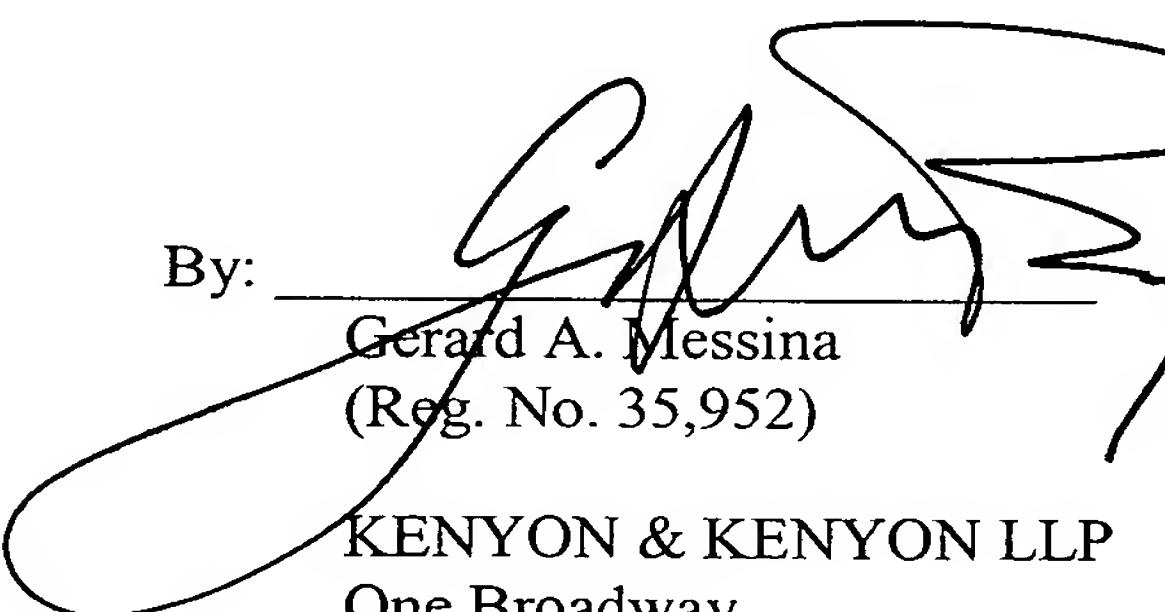
Accordingly, it is respectfully submitted that claims 5 to 26 are allowable.

CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

Dated: 7/6/2010

By: 

Gerard A. Messina
(Reg. No. 35,952)


reg. no.
3,3865
Area C
(DES/ITCH)

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646

1970482